CITY OF NEWPORT BEACH PLANNING COMMISSION STAFF REPORT

May 19, 2011 Hearing Agenda Item 3

SUBJECT: Fisher Residence - (PA2010-034)

3725 Ocean Boulevard

Variance No. VA2010-001

Modification Permit No. 2010-006

APPLICANT: John McInnes, Architect

PLANNER: Kay Sims, Assistant Planner

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PROJECT SUMMARY

The applicant requests approval of a variance to allow a proposed single-family dwelling to exceed the 24-foot height limit for flat roofs within the R-1 (Single-Unit Residential) Zoning District. Additionally, the proposed single-family dwelling would exceed the "top of curb" height limit for properties on the bluff side of Ocean Boulevard. The applicant also requests a modification permit to allow the proposed single-family dwelling to encroach into the required 10-foot front and 4-foot side setbacks (caissons); and site-retaining walls (and caissons) with related railings adjacent to the side property lines which exceed the 6-foot height limit allowed within side setback areas.

RECOMMENDATION

- 1) Conduct a public hearing; and
- 2) Adopt Resolution No. ____, approving Variance No. VA2010-001 and Modification Permit No. 2010-006 (Attachment No. PC 1).



LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	Single-Unit Residential Detached (RS-D)	Single-Unit Residential (R-1)	Single-unit residential dwelling
NORTH	Single-Unit Residential Detached (RS-D)	Single-Unit Residential (R-1)	Single-unit residential dwelling
SOUTH	Single-Unit Residential Detached (RS-D)	Single-Unit Residential (R-1)	Single-unit residential dwelling
EAST	Single-Unit Residential Detached (RS-D)	Single-Unit Residential (R-1)	Single-unit residential dwelling
WEST	Pacific Ocean	Pacific Ocean	Pacific Ocean

INTRODUCTION

Project Setting and Background

The subject site is located in Corona del Mar on the bluff side of Ocean Boulevard near the easterly end of the street, scenic overlook, and pedestrian walkway to Little Corona Beach. In this area, private lots on the westerly side of Ocean Boulevard are separated from the street and sidewalk by a public right-of-way area (approximately 43 feet wide or greater). The area at the front property line of each lot generally slopes slightly downward from the northerly side to the southerly side, similar to the adjacent public right-of-way area. The lots are coastal bluff lots and slope steeply downward from the front property line to the ocean's edge. The lots are similarly developed with multi-level, single-unit dwellings constructed into the bluff.

The General Plan (GP) and the Local Coastal Plan (LCP) state that coastal bluffs are "significant natural landforms considered to be important scenic and visual resources within the coastal zone area of the City". Development along the coastal bluff side of Ocean Boulevard is one of the few areas in the coastal zone where there is extensive development of the bluff face. The initial subdivision and development in this area occurred prior to adoption of policies and regulations intended to protect coastal bluffs and other landforms. Development in this area is allowed to continue on the bluff face provided it complies with various policies stated in the GP and LCP, which are implemented by the Bluff Overlay District in the recently adopted Zoning Code.

The subject site is 6,986.25 square feet in area (125 feet x 55.89 feet) and is developed with a single-unit dwelling below a one-story, two-car garage with a flat roof. An exterior staircase leads from the garage to the entry of the residence below. The garage, located on the northerly side of the lot in line with the dwelling below, was permitted to encroach 9 feet 6 inches into the required 10-foot front setback with approval of Variance No. 599 (1960). The roof of the garage is 8 feet high above the lowest natural grade elevation and 4 feet 6 inches high above the top of curb at Ocean Boulevard (at its southerly corner). An existing wall, permitted in 1961, is attached to the garage and extends from the front corners of the garage to each side property line. It is constructed and painted to match the finish material of the garage and appears to be part of the garage or dwelling when viewed from Ocean Boulevard. The wall is 11 feet high above natural grade and 7 feet 8 ¾ inches high above the top of curb at Ocean Boulevard at the southerly side property line. Overgrown hedges and landscape plantings are located within the public right-of-way along the driveway and adjacent to the wooden fence along the front property line.

The lot area between the rear of the dwelling and the existing bluff edge has been altered and developed with terraced retaining walls to provide usable rear yard area. The area along the easterly side yard slopes slightly toward the edge of the existing bluff edge. A chain-link fence atop a site retaining wall is located along the southerly side property line and extends across the entire width of the property, stepping down to the lowest elevation (northwesterly corner area) of the lot. This retaining wall is the

furthest point of development on the bluff face. The northerly side of the lot slopes steeply downward toward the bluff edge and is terraced with retaining walls.

Project Description

The proposed project consists of demolition of the existing dwelling, two-car garage, attached wall, and the construction of a 7,304 square foot, multi-level, single-unit dwelling with an attached two-car garage, deck areas, and a basement level patio area. Portions of the upper level consisting of the garage, entry area, and a mechanical equipment area to the rear of the garage exceed the top of curb height at Ocean Boulevard. The roof areas of all levels of the proposed home are flat and portions of the upper level exceed the 24-foot height limit for flat roofs in the R-1 Zoning District. All four levels encroach into the 10-foot front setback. The above ground encroachments are 8 feet at the garage (on the southerly side), 8 feet 9 inches at the elevator (center) and 6 feet 7 inches on the northerly side. The below ground caissons would encroach 1 foot 5 inches into the southerly side setback, and 3 feet 3 inches into the northerly side setback.

At the street-side of the lot, the existing driveway will be relocated to the southerly (lower) side of the property and graded to provide a maximum slope of 19 percent from the street to the garage face. The remainder of the public right-of-way area will be terraced and landscaped. The proposed landscaping and improvements within the public right-of-way are not subject to zoning regulations and are not part of the project request. However, the improvements require an encroachment permit that is subject to the review and approval of the Public Works Department.

At the seaward side of the property, three full levels of the project will be visible. The entire third level will be stepped back toward the street. The entry, garage, and mechanical area (slightly higher elevation) will be stepped further back. A "day-lighted' basement level and patio area will be visible on the northerly side of the lot.

The existing retaining wall located at the furthest seaward extent of existing development on the bluff face will be reconstructed and reinforced with new caissons. New site retaining walls and related safety railings (where required) will be constructed adjacent to the side property lines beginning at the front (top) of the lot and ending at the face of the reconstructed retaining wall. These walls and related safety railings will be 10 feet 6 inches, at the highest point above existing natural grade. The grade on the landward side of the existing retaining wall will be lowered to provide a basement level patio area. The area on the seaward side of the existing retaining wall that consists of the natural bluff face will remain unaltered.

DISCUSSION

<u>Analysis</u>

The applicant's request was received and deemed complete prior to the effective date of the City's current Zoning Code (November 25, 2011). As a result, the request has been analyzed according to the development standards of the previous Zoning Code. This is authorized by Ordinance No. 2010-21 which adopted the comprehensive Zoning Code update. As noted in "Project Development Characteristics" (Attachment No. PC-2), the proposed project complies with the development standards listed with the exception of requested deviations to required height limits and encroachments into the front and side setbacks.

General Plan, Local Coastal Plan, and Zoning Code Designations

The proposed project will not change the density on the site and is consistent with the designation "Single Unit Residential Detached" (RS-D) of the Land Use Element of the General Plan (GP) and "Single Unit Residential Detached" (RSD-A) of Coastal Land Use Plan (CLUP) of the Newport Beach Local Coastal Program (LCP).

Bluff Overlay District - Updated Zoning Code

Although the Bluff Overlay District does not technically apply given that the application was deemed complete prior to the effective date of the adoption of the updated Zoning Code, the project is subject to coastal bluff protection policies of the GP and LCP. Development is thus limited to be within the "predominant line of existing development" (PLOED). Compliance with the Bluff Overlay of the current code will ensure consistency with the applicable policies. Pursuant to Section 20,28,040 (Bluff Overlay District), properties located between 3601 and 3729 Ocean Boulevard are permitted to construct both principle and accessory structures "between the property line adjacent to Ocean Boulevard and the seaward extent of the existing development area. New development shall not extend further onto the bluff face beyond existing development." The proposed project complies with the provisions of the Bluff Overlay District as no alteration of the bluff is proposed beyond (seaward) of the existing retaining wall structure. Conditions of approval have also been incorporated into the resolution to assure that the project complies with GP and LCP policies related to bluff stabilization, minimization of bluff recession, and prevention of bluff erosion (see Attachment No. PC-1, Conditions of Approval Nos. 1, 4, 5, 6, 26, and 32).

Modification Permit

Pursuant to Section 20.93.030 (Modification Permit, Required Findings), the Planning Commission may approve a modification permit to allow the encroachments into the front and side yards requested upon finding that:

1. The granting of the application is necessary due to practical difficulties associated with the property and that the strict application of the Zoning Code results in physical

hardships that are inconsistent with the purpose and intent of the Zoning Code.

- 2. The requested modification will be compatible with existing development in the neighborhood.
- 3. The granting of such an application will not adversely affect the health or safety of persons residing or working in the neighborhood of the property and will not be detrimental to the general welfare or injurious to property or improvements in the neighborhood.

Although the site is large in area, in order to comply with the General Plan and Local Coastal Plan policies, the buildable depth of the lot is limited to the "predominant line of existing development" on the adjacent properties. Similar to the neighboring lots, the topography of the lot further constrains the buildable area because there is a vertical drop of approximately 20 feet from the front property line to the rear of the existing dwelling.

When viewed from Ocean Boulevard, the wide (approximately 43 feet, measured from back of sidewalk) public right-of-way area provides a deep front yard, which reduces the visual impact of the encroachment of the project into the 10-foot front setback. The maximum above ground encroachment of the proposed project will be two feet from the front property line at the face of the garage and one-foot-three-inches at the elevator (other levels are subterranean and are not visible). The existing dwelling and two-car garage encroach into the front setback nearly to the front property line. Developments on adjacent properties have been approved to encroach up to the front property line and have not proven to be detrimental to the area.

The below ground caissons and permanent shoring walls within the front and side setbacks are necessary to provide stability for construction of the project. They are subterranean encroachments that will not obstruct views from the adjacent properties or from Ocean Boulevard. The encroachment of the structures in the front and side yards are similar to those granted to neighboring properties located on the bluff face along Ocean Boulevard.

The previous Zoning Code measures height of retaining walls from the lowest side of existing natural grade. Portions of the proposed above-ground retaining walls and related safety railings adjacent to the side property lines are over height due to the lower natural grade areas existing on the site. The proposed retaining walls provide stability for the site along the side property lines and provide protection and privacy for residents of the subject property and neighboring properties. They are necessary to support a Building Code and Fire Department requirement for an access and egress stairway from the lower area of the lot to the front of the property and Ocean Boulevard.

Variance

Pursuant to the previous Zoning Code (Section 20.91.035: Variance, Required Findings), the Planning Commission may approve the requested variances to allow the

project to exceed the top of curb height adjacent to Ocean Boulevard and the 24-foot height limitation for a flat roof within the R-1 Zoning District upon finding:

- That because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of this code deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.
- 2. That the granting of the application is necessary for the preservation and enjoyment of substantial property rights of the applicant.
- That the granting of the application is consistent with the purposes of this code and will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.
- 4. That the granting of such application will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not under the circumstances of the particular case be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood.

The design and location of the project is constrained by the topography of the site and its location on a coastal bluff. The lot is steeply sloped at the front area and also steps down the slope on the northerly side to its lowest elevation in the northwesterly corner near the existing bluff edge. The southerly side of the lot slopes more evenly and is higher than the northerly side at the existing bluff face. The uneven grade across the lot restricts the ability to adhere to the natural grade height limitation specified in the Zoning Code. In order to comply with provisions related to coastal bluff protection (GP and LCP policies), the location of the project is further limited to the buildable area between the front setback and the "predominant line of existing development".

Ocean Boulevard is identified as a "public view corridor" within the GP (Chapter 10: 20.3, Natural Resources Element) and LCP (Policy 4.4.1-6, Scenic and Visual Resources Section). It is designated as a "Coastal View Road" per "Figure NR3 — Coastal Views" of the GP. The LCP (Policy 4.4.2-4) "prohibits projections associated with new development to exceed the top of curb on the bluff side of Ocean Boulevard". The Zoning Code (Chapter 20.65.060.B, Existing Structures and Permits) implements the policy by limiting the height of structures to the "top of the curb height" adjacent to each property along the bluff side of Ocean Boulevard.

Although the proposed residence exceeds height limits, the view to the ocean from Ocean Boulevard will be enhanced as compared to that provided by the existing development. The slightly higher areas of the third level of the project consist of an entry area, which includes an elevator, a two-car garage and mechanical area above portions of the living area immediately behind the garage. The ceiling height of the garage, entry, elevator, and mechanical area is designed to the minimum height possible to allow their use. The design does not include exterior chimneys above the flat roofs. The maximum

height of the upper level above the top of curb height of Ocean Boulevard will be lower than the garage and wooden fence currently existing on the lot, and lower than the height compared to neighboring properties. The area of the proposed roof at its maximum height above the top of curb (3 feet 10 ½ inches) is located at the end of the eave at the southerly side setback. When viewed from Ocean Boulevard, the height of the project as designed will be compatible with neighboring properties and will not be visually detrimental to the area.

The project also includes relocating the existing driveway approach to the southerly (lower) side of the property in order to lower the garage and entry level area as much as possible. The design of the driveway approach at 19 percent slope has been approved by the City Traffic Engineer and is the maximum slope and grade change allowed across the public right-of-way. The length of the driveway approach cannot be increased to allow a lower garage entrance without moving the project further onto the bluff face. The existing dwellings on the bluff between Poinsettia Avenue and Poppy Avenue have been built on or within approximately two feet from the front property line due to similar topographic constraints. Moving the proposed project further away from the street to lower the garage would differ from existing development along this bluff.

The request to exceed the 24-foot height limit will not impact public views. Per requirements of the previous Zoning Code, height is measured from existing natural grade. The existing natural grade to the rear of the property is not a flat plane. The northerly side of the property is steeper than the southerly side and is terraced steeply downward toward the existing bluff edge. The lower patio area at the northwesterly corner is the lowest elevation within the existing developed area. The ridge of a sloping roof would be allowed to 29 feet above existing natural grade. The highest elevation of the proposed project is 32.95 feet above existing natural grade (which is directly above the lowest elevation on the site). The areas exceeding the 24-foot height limit for flat roofs will be located to the rear of the project and will not be visible from Ocean Boulevard and will be below the top of curb height. Additionally, the areas will not appear higher than the adjacent floor area when viewed from the neighboring properties.

Summary

It is staff's determination that the findings for approval for the modification permit and variance requests for the project can be made based on the information above. Facts in support of the required findings are presented in the draft resolution (see Attachment No. PC-1).

Alternatives

 If the Planning Commission determines that the findings for approval of the modification permit or variance requests cannot be made, the Planning Commission should direct staff to prepare findings and a resolution, denying the request and to return at the next Planning Commission meeting date with such resolution for adoption. The Planning Commission may suggest specific design modifications that are necessary to make the required finding for approval. If this is done, the item should be continued if the changes are reasonable and easily incorporated into the design. If substantial changes are directed, the item should be removed from calendar to allow redesign of the project.

Environmental Review

The proposed project has been reviewed and it has been determined that it is categorically exempt under Section 15303, of the California Environmental Quality Act (CEQA) Guidelines – Class 3 (New Construction or Conversion of Small Structures. This exemption includes construction of a single-family residence in a residential area. The proposed project is a single-family residence to be constructed in the R-1 (Single-Unit Residential) Zoning District.

Public Notice

Notice of this hearing was published in the Daily Pilot, mailed to property owners within 300 feet of the property and posted at the site a minimum of 10 days in advance of this hearing, consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the City's website.

Prepared by: Submitted by:

Kay Sims, Assistant Planner Gregg Ramirez, Senior Planner

ATTACHMENTS

PC 1 Draft Resolution with Findings and Conditions PC 2 Table 1: Project Development Characteristics

PC 3 Photos PC 4 Plans

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Tmplt: 11/23/09

Attachment No. PC 1

Draft Resolution with Findings and Conditions

RESOLUTION NO. ####

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH APPROVING VARIANCE PERMIT NO. VA2010-001 AND MODIFICATION PERMIT NO. MD2010-006 FOR THE FISHER RESIDENCE LOCATED AT 3725 OCEAN BOULEVARD (PA2010-034)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

- An application was filed by Mr. John McInnes, Architect, with respect to property located at 3725 Ocean Boulevard, and legally described as CORONA DEL MAR LOT BLK A POR OF BLK requesting approval of a variance and a modification permit.
- 2. The applicant requests approval of a variance to allow a proposed single-family dwelling to exceed the 24-foot height limit for flat roofs within the R-1 (Single-Unit Residential) Zoning District. Additionally, the proposed single-family dwelling would exceed the "top of curb" height limit for properties on the bluff side of Ocean Boulevard. The applicant also requests a modification permit to allow the proposed single-family dwelling to encroach into the required 10-foot front and 4-foot side setbacks (caissons); and site-retaining walls (and caissons) with related railings adjacent to the side property lines which exceed the 6-foot height limit allowed within side setback areas.
- The subject property is located within the Single-Unit Residential (R-1) Zoning District and the General Plan Land Use Element category is Single-Unit Residential Detached (RS-D).
- 4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Single-Unit Residential Detached (RSD-A).
- A public hearing was held on May 19, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Section 15303 Class 3 (New Construction or Conversion of Small Structures) which includes construction of a single-family residence and related accessory structures in a residential zone. This exemption includes construction of a single-family residence in a residential area. The proposed project is a single-family residence to be constructed in the R-1 (Single-Unit Residential) Zoning District.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.93.030 (Modification Permit, Findings) of the Newport Beach Municipal Code (1997 Zoning Code), the following findings and facts in support of such findings are set forth:

Finding:

A. The granting of the application is necessary due to practical difficulties associated with the property and that the strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code.

Facts in Support of Finding:

A-1. The subject lot is a coastal bluff lot located on the westerly side of Ocean Boulevard. Although the lot is large in total area, the buildable area is limited to the "predominant line of development" (PLOED) of the adjacent properties in order to comply with the General Plan (GP) and Local Coastal Plan (LCP) policies. The lot is further constrained by the topography within the buildable area, which slopes steeply from the front of the lot to the existing bluff edge, and steps steeply down on the northerly side to a much lower elevation than the southerly side. Additionally, within the front portion of the lot, there is a vertical drop of approximately 20 feet from the front property line to area below. These constraints make it impractical to adhere to the front setback specified in the Zoning Code and still design a driveway, garage, and entry into the dwelling while complying with predominant line of existing development policies.

Finding:

B. The requested modification will be compatible with existing development in the neighborhood.

Facts in Support of Finding:

- B-1. The above and below ground encroachments into the front setback are similar to those granted to neighboring properties located on the bluff face; and are less than those of the existing dwelling and garage.
- B-2. The below ground caissons and permanent shoring walls within the front and side setbacks are similar to those approved for neighboring properties. They are below ground and will not be visible from adjacent properties or Ocean Boulevard.
- B-3. When viewed from Ocean Boulevard, the wide public right-of-way area provides a deep front yard, which reduces the impact of the encroachment of the project into the 10-foot front setback. The existing dwelling and two-car garage encroach into the front setback nearly to the front property line. The maximum encroachment of the proposed project will be two feet from the front property line (face of the garage). Developments

on neighboring properties have been similarly approved to encroach to the front property line and have not proven to be detrimental to the area.

Finding:

C. The granting of such an application will not adversely affect the health or safety of persons residing or working in the neighborhood of the property and will not be detrimental to the general welfare or injurious to property or improvements in the neighborhood.

Facts in Support of Finding:

- C-1. The maximum encroachment of the proposed project will be two feet from the front property line at the face of the garage and one-foot-three-inches from the entry area. The existing dwelling and two-car garage encroach into the front setback nearly to the front property line. Developments on adjacent properties have been approved to encroach up to the front property line and have not proven to be detrimental to the area.
- C-2. The below ground caissons and permanent shoring walls within the front and side setbacks are necessary to provide stability for construction of the principle and accessory structures on the site. They are subterranean encroachments that will not adversely obstruct views from the adjacent properties or from Ocean Boulevard.
- C-3. Portions of the above-ground retaining walls and related safety railings adjacent to the side property lines are over height because the Zoning Code in effect prior to November 24, 2010, (previous code) measures height of retaining walls from the lowest side of existing natural grade. The proposed retaining walls provide stability for the site along the side property lines and provide protection and privacy for residents of the subject property and neighboring properties. They are necessary to support a Building Code and Fire Department requirement for an access and egress stairway from the lower area of the lot to Ocean Boulevard

In accordance with Section 20.91.035 (Variance, Required Findings) of the Newport Beach Municipal Code in effect prior to November 25, 2011, the following findings and facts in support of such findings are set forth:

Finding:

D. That because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of this code deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification

Facts in Support of Finding:

- D-1. The design and location of the project is further constrained by the topography of the site. The lot is steeply sloped at the front area and also steps down the slope on the northerly side to its lowest elevation in the northwesterly corner near the existing bluff edge. The southerly side of the lot is more gently sloping and is much higher toward the bluff edge. The uneven natural grade across the lot to the rear of the front setback area restricts the ability to design a project that complies with the 24-foot natural grade height limitation specified in the Zoning Code at every elevation point of the structure.
- D-2. In order to comply with provisions of the General Plan and Local Coastal Plan, the location and design of the project is restricted to the buildable area between the rear of the front setback and the "predominant line of existing development".
- D-3. The Zoning Code limits the height of the project to the "top of curb height' adjacent to Ocean Boulevard. There is a vertical drop of approximately 20 feet at the front area of the property. In order to comply with the top of curb height limitation, the driveway approach would have to be lengthened and lowered. This would require locating the project further down the bluff face, resulting in a reduction of floor area, and additional grading within the public right-of-way.

Finding:

E. That the granting of the application is necessary for the preservation and enjoyment of substantial property rights of the applicant.

Facts in Support of Finding:

- E-1. The subject lot consists of a steeply sloping coastal bluff. The location of the project is limited to within the buildable area between the rear of the front setback and the "predominant line of development". Denial of the requested variances would reduce the size of the project below comparable projects in the area and necessitate an unsafe/steeper driveway to a garage or elimination of the garage altogether, which would not be consistent with the Zoning Code and neighborhood development as each home along the Ocean Boulevard bluff has a two-car garage.
- E-2. The design and location of the project as proposed achieves allowable development of the site within the constraints of the topography and limits of development on the bluff face. Granting of the variance requests will preserve the applicant's right to a comparable size dwelling with others in the neighborhood and the enjoyment of the property while preserving the remainder of the bluff face.

Finding:

F. That the granting of the application is consistent with the purposes of this code and will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.

Facts in Support of Finding:

- F-1. The Zoning Code permits the approval of variances to resolve practical physical hardships resulting from the unique topography and location constraints that exist in the area and on this lot.
- F-2. Granting the variance to height is necessary to permit a residence that is comparable to neighboring lots along the Ocean Boulevard bluff and, therefore, would not constitute the granting of special privileges.

Finding:

G. That the granting of such application will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not under the circumstances of the particular case be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood

Facts in Support of Finding:

- G-1. The multi-level design of the project steps back at the upper levels, and is consistent with the design of development on neighboring properties on the bluff face. The granting of the variance requests will not adversely impact the visual view of the bluff face as viewed from the ocean or neighboring properties.
- G-2. When viewed from Ocean Boulevard, the height of the project as designed will be compatible with neighboring properties and will not significantly affect views from Ocean Boulevard. It will enhance the view to the ocean across the property compared to the existing dwelling and fence on the site and is lower than similar properties adjacent to the north.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

- The Planning Commission of the City of Newport Beach hereby approves Variance Permit No. VA2010-001 and Modification Permit No. MD2010-006 subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
- 2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance

with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 19TH DAY OF MAY, 2011.

	Michael Toerge, Secretary
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	Earl McDaniel, Chairman
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EXHIBIT "A"

CONDITIONS OF APPROVAL

Planning

- 1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval. It shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.) No development shall occur on the bluff face beyond the "predominant line of existing development", which is consistent with the "furthest seaward extent of existing development on adjacent properties" of the Bluff Overlay in this area along Ocean Boulevard. The natural bluff face shall be restored to its natural state if inadvertent alteration should occur during construction of the project.
- 2. Variance No. VA2010-001 and Modification Permit No. MD2010-006 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
- 3. This approval was based on the particulars of the individual case and does not in and of itself or in combination with other approvals in the vicinity or Citywide constitute a precedent for future approvals or decisions.
- 4. The new development shall be setback from the bluff edge a sufficient distance to ensure stability, ensure that it will not be endangered by erosion, and to avoid the need for protective devices during the economic life of the structure (75 years). Such setbacks must take into consideration expected long-term bluff retreat over the next 75 years.
- 5. Prior to the issuance of a building or grading permit, a waiver of future shoreline protection during the economic life of the structure (75 years) shall be executed and recorded against the property. The waiver shall be binding upon all future owners and assignees. The waiver shall be reviewed and approved by the City Attorney prior to recordation.
- Accessory structures shall be relocated or removed if threatened by coastal erosion.
 Accessory structures shall not be expanded and routine maintenance of accessory structures is permitted.
- 7. <u>Prior to issuance of building permits</u>, approval from the California Coastal Commission shall be required.
- 8. <u>Prior to the issuance of a building permit</u>, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.

Landscaping

- 9. Prior to the issuance of building permits, the applicant shall submit a landscape and irrigation plan prepared by a licensed landscape architect. The plans shall comply with the City's Water Efficient Landscape Ordinance (Chapter 14.17) and Water Conservation Ordinance (Chapter 14.16) of the Municipal Code. These plans shall incorporate native, drought tolerant plantings and water efficient irrigation practices, and the plans shall be approved by the Planning Division, Public Works, and General Services Departments. All planting areas shall be provided with a permanent underground automatic sprinkler irrigation system of a design suitable for the type and arrangement of the plant materials selected. The irrigation system shall be adjustable based upon either a signal from a satellite or an on-site moisture-sensor.
- 10. All new landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
- 11. Prior to the final of building permits, the applicant shall schedule an inspection by the Code and Water Quality Enforcement Division to confirm that all landscaping on the property and within the public right-of-way was installed in accordance with the approved plan.
- 12. Reclaimed water shall be used whenever available, assuming it is economically feasible.
- 13. Water leaving the project site due to over-irrigation of landscape shall be minimized. If an incident such as this is reported, a representative from the Code and Water Quality Enforcement Division, shall visit the location, investigate, inform and notice the responsible party, and, as appropriate, cite the responsible party and/or shut off the irrigation water.
- 14. Watering shall be done during the early morning or evening hours (between 4:00 p.m. and 9:00 a.m.) to minimize evaporation the following morning.
- 15. All leaks shall be investigated by a representative from the Code and Water Quality Enforcement Division and the Applicant shall complete all required repairs.

Lighting

16. Lighting shall be in compliance with applicable standards of the Zoning Code. Exterior on-site lighting shall be shielded and confined within site boundaries. No direct rays or glare are permitted to shine onto public streets or adjacent sites.

Public Works

- 17. The existing driveway approach shall be plugged per City Standard STD-165-L.
- 18. The proposed driveway approach shall comply with City Standard STD-160-L-C. Per discussion with the City Traffic Engineer, the maximum allowable slope is 19 percent across the entire driveway and the maximum allowable grade change is 11 percent.
- 19. A new sewer lateral and cleanout shall be installed per STD-406-L and shown on final plans. The old sewer shall be capped at the property line.
- 20. Street, drainage and utility improvements within the public right-of-way shall be submitted on City standard improvement plan formats. All of the plan sheets shall be wet sealed, dated, and signed by the California registered professionals responsible for the designs shown on said plans.
- 21. All encroachments within the Ocean Boulevard public right-of-way shall comply with City Council Policy L-6.
- 22. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.
- 23. No structural encroachment, including but not limited to columns, caissons, or tie backs are permitted within the public right-of-way unless otherwise approved by the Public Works Department.
- 24. All work conducted within the public right-of-way shall be approved under an encroachment permit issued by the Public Works Department.
- 25. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.
- 26. All on-site drainage shall comply with the latest City Water Quality requirements and shall be directed to Ocean Boulevard to minimize coastal bluff recession.
- 27. Prior to the issuance of the building permit, Public Works Department plan check and inspection fee shall be paid.
- 28. <u>Prior to issuance of a grading or building permit,</u> the applicant shall prepare a construction phasing plan and construction delivery plan that includes routing of large

vehicles. The plan shall include a haul route plan for review and approval by the Public Works Department. Said plan shall specify the routes to be traveled, times of travel, total number of trucks, number of trucks per hour, time of operation, and safety/congestion precautions (e.g., signage, flagmen). Large construction vehicles shall not be permitted to travel narrow streets and alleys as determined by the Public Works Department. Traffic control and transportation of equipment and materials shall be conducted in accordance with state and local requirements. The plans shall include a provision that maintains the public right-of-way open to vehicular and pedestrian traffic after working hours daily.

29. A haul route permit shall be required for any large construction related vehicle (i.e. dirt hauling vehicle).

Building Division

- 30. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The project shall be designed to meet fire protection requirements and shall be subject to review and approval by the Newport Beach Building Division and Fire Department.
- 31. Prior to issuance of the grading permit, the project applicant shall document to the City of Newport Beach Building Division that the project is designed and will be constructed to comply with current seismic safety standards and the current City-adopted version of the Uniform Building Code.
- 32. Prior to issuance of the grading permit, a geotechnical report provided by a licensed Certified Engineering Geologist or Geotechnical Engineer shall be submitted with construction drawings for plan check. The report shall include slope stability analyses and erosion rate estimates. The Building Division shall ensure that the project complies with the geotechnical recommendations included in the geologic investigation as well as additional requirements, if any, imposed by the Newport Beach Building Division. To assure stability, the development must maintain a minimum factor of safety of 1.5 against land-sliding for the economic life of the structure (75 years).

Construction

- 33. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday, and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
- 34. Where vehicles leave the construction site and enter adjacent public streets, any visible track-out extending for more than fifty (50) feet from the access point shall be swept within thirty (30) minutes of deposition.

- 35. The construction and equipment staging area shall be located in the least visually prominent area on the site and shall be properly maintained and/or screened to minimize potential unsightly conditions.
- 36. A six-foot-high screen and security fence shall be placed around the construction site during construction.
- 37. Construction equipment and materials shall be properly stored on the site when not in use.
- 38. The applicant shall comply with SCAQMD Rule 403 requirements as follows:

Land Clearing/Earth-Moving

- a. Exposed pits (i.e., gravel, soil, dirt) with 5 percent or greater silt content shall be watered twice daily, enclosed, covered, or treated with non-toxic soil stabilizers according to manufacturers' specifications.
- b. All other active sites shall be watered twice daily.
- c. All grading activities shall cease during second stage smog alerts and periods of high winds (i.e., greater than 25 mph) if soil is being transported to off-site locations and cannot be controlled by watering.
- d. All trucks hauling dirt, sand, soil, or other loose materials off-site shall be covered or wetted or shall maintain at least two feet of freeboard (i.e., minimum vertical distance between the top of the load and the top of the trailer).
- e. Portions of the construction site to remain inactive longer than a period of three months shall be seeded and watered until grass cover is grown or otherwise stabilized in a manner acceptable to the City.
- f. All vehicles on the construction site shall travel at speeds less than 15 mph.
- g. All diesel-powered vehicles and equipment shall be properly operated and maintained.
- h. All diesel-powered vehicles and gasoline-powered equipment shall be turned off when not in use for more than 5 minutes.
- j. The construction contractor shall utilize electric or natural gas-powered equipment instead of gasoline or diesel-powered engines, where feasible.

Paved Roads

k. Streets shall be swept hourly if visible soil material has been carried onto adjacent public paved roads. (See condition No. 34 above).

- m. Construction equipment shall be visually inspected prior to leaving the site and loose dirt shall be washed off with wheel washers as necessary.
- 39. The applicant shall employ the following best available control measures ("BACMs") to reduce construction-related air quality impacts:

Dust Control

- Water all active construction areas at least twice daily.
- Cover all haul trucks or maintain at least two feet of freeboard.
- Pave or apply water four times daily to all unpaved parking or staging areas.
- Sweep or wash any site access points within two hours of any visible dirt deposits on any public roadway.
- Cover or water twice daily any on-site stockpiles of debris, dirt or other dusty material.
- Suspend all operations on any unpaved surface if winds exceed 25 mph.

Emissions

- Require 90-day low-NOx tune-ups for off road equipment.
- Limit allowable idling to 5 minutes for trucks and heavy equipment

Off-Site Impacts

- Encourage car pooling for construction workers.
- Limit lane closures to off-peak travel periods.
- Park construction vehicles off traveled roadways.
- Wet down or cover dirt hauled off-site.
- Sweep access points daily.
- Encourage receipt of materials during non-peak traffic hours.
- Sandbag construction sites for erosion control.

Fill Placement

- The number and type of equipment for dirt pushing will be limited on any day to ensure that SCAQMD significance thresholds are not exceeded.
- Maintain and utilize a continuous water application system during earth placement and compaction to achieve a 10 percent soil moisture content in the top six-inch surface layer, subject to review/discretion of the geotechnical engineer.

Miscellaneous

40. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Fisher Residence including, but not limited to, the

<u>VA2010-001</u> and <u>MD2010-006</u> (<u>PA2010-034</u>). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Attachment No. PC 2

Table 1: Project Development Characteristics

Table 1: Project Development Characteristics

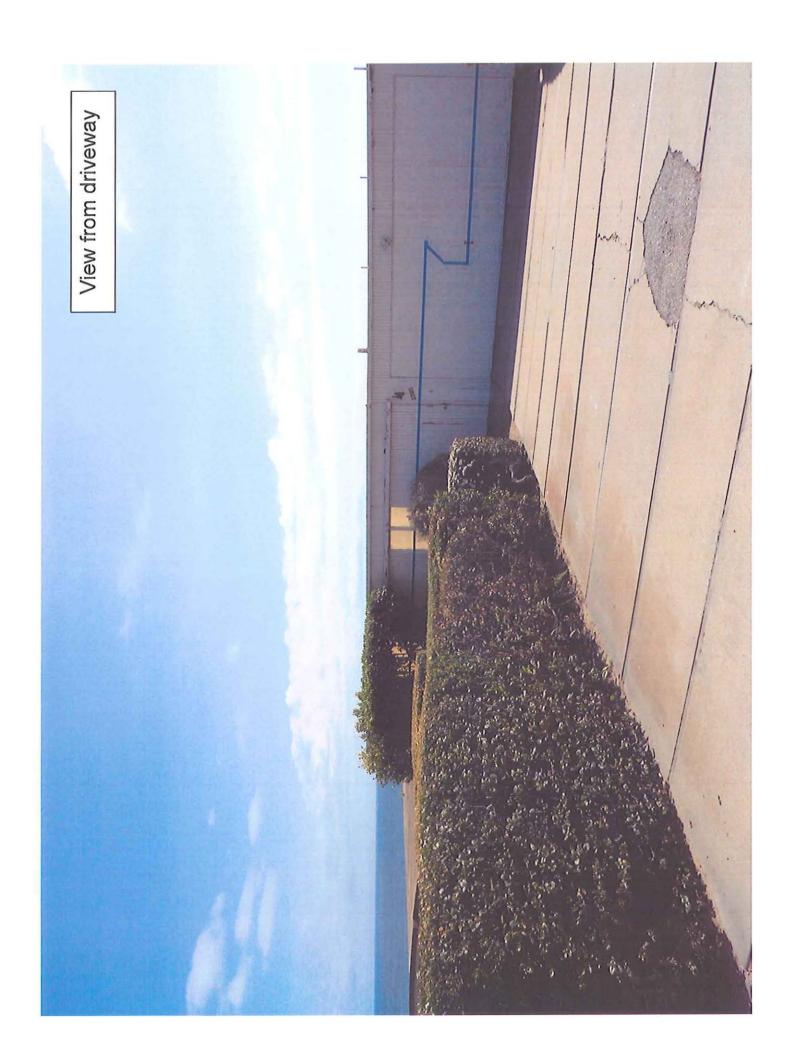
PROJECT ELEMENTS	REQUIRED OR PERMITTED	PROPOSED
Gross land area	6,986.25 sq. ft.	No Change
Buildable area (lot minus setback areas)	5,028.25 sq. ft. (125'-20' x 55.89'-8')	No Change
Buildable depth of lot (from rear of 10 ft. front setback "to the seaward extent of existing development on the bluff")	Northerly side property line: principle & accessory structures – 46 ft. 9 in. Southerly side property line: principle & accessory structures – 46 ft. 9 in.	As Required
Maximum gross floor area (1.5 x buildable area)	7,542.68 sq. ft.	7, 303.61 sq. ft.
		Basement 1,994.79 sq. ft. 1 st Level 1,865.85 sq. ft. 2 nd Level 1,801.43 sq. ft. 3 rd Level 1,271.04 sq. ft. Total 7,303.61 sq. ft.
Building Height Limits:		
	24 ft. flat roof/29 ft pitched roof above natural grade (NG), 24 ft. to top of rail on a deck above natural grade (NG)	 All roofs are flat. Portions of living area and garage at rear of 4th level are Max. 8 ft.11 in. above 24 ft. limit. (32.95 ft. above NG)
	-6 ft. within side yard setbacks for walls Top of curb (TOC) elevation for all structures	 Site retaining walls in side yards exceed 6 ft in height. Portions of entry area, two-car
		garage, and living area at rear of garage over TOC elevation. Max. Ht. over curb from 1 ft. 9¼ in. at northerly front corner of entry to 3 ft. 10½ in. at southerly front corner of garage.
Setbacks:		
Front (Ocean Blvd. side):	10 ft.Front walls of garageFront walls of elevator areaPermanent shoring wallsCaissons	From PL 8 ft. 1 ft. 3 in. 8 ft. 9 in. 2 ft. 8 ft. 1 in. 9 ft. 11 in.
Sides:	4 ft.	
	Retaining wall caissons -southerly side yard -northerly side yard	1 in. 3 ft. 11 in. 8 in. 3 ft. 4 in.
	Caissons/dwelling -southerly side yard -northerly side yard	2 ft. 7 in. 1 ft. 5 in. 9 in. 3 ft. 3 in.
	Walls exceeding 6 ft. height limit in setback	Adjacent to side property lines.
Rear (Ocean side):	10 ft.	10 ft. (no encroachments)
Parking	2 spaces (including one covered)	2-car garage

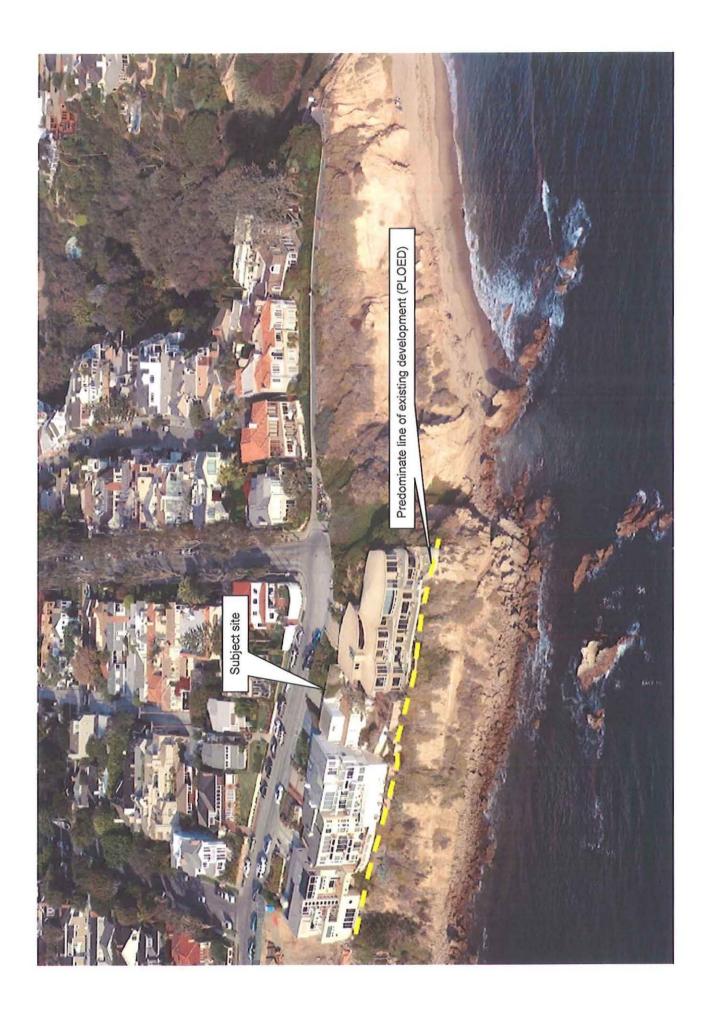
Attachment No. PC 3

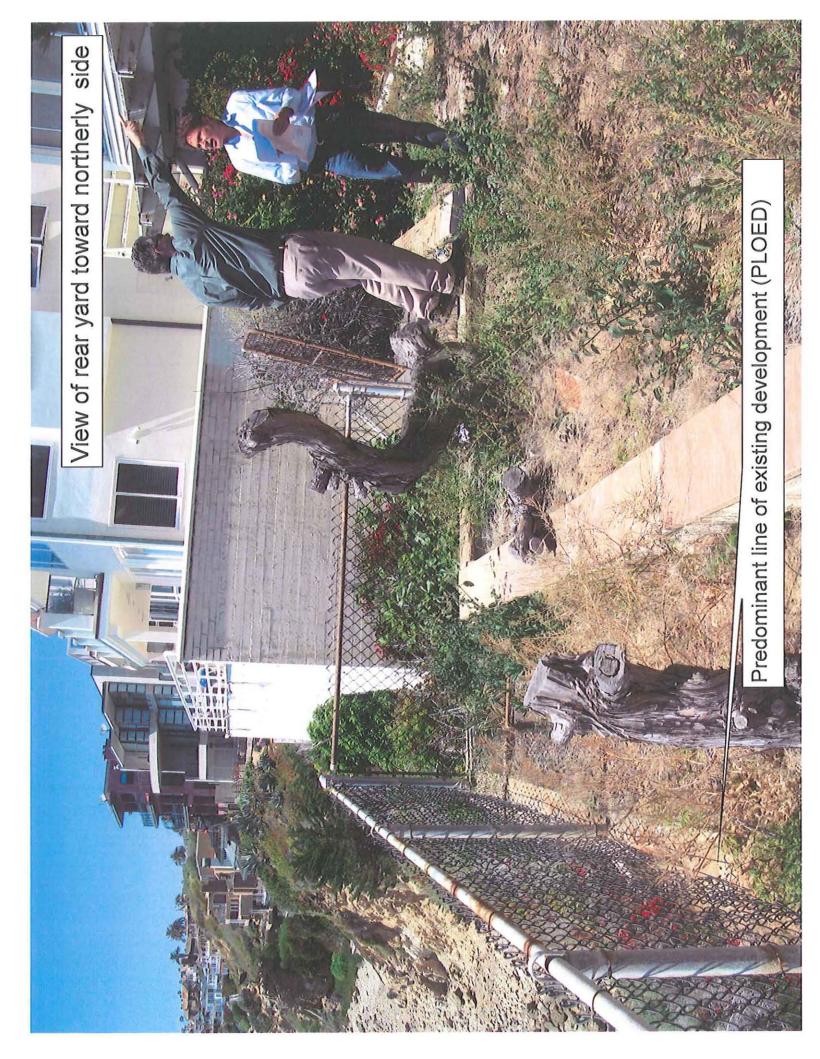
Photos

Blue Line depicts height of proposed residence (As viewed from sidewalk across Ocean Boulevard)



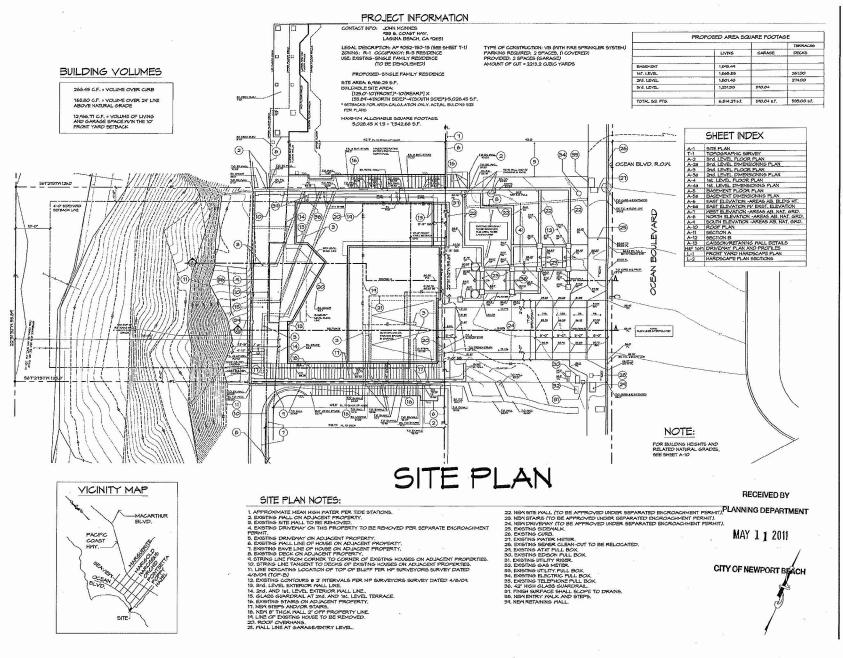






Attachment No. PC 4

Plans



JOHN MCINNES ARCHITECT



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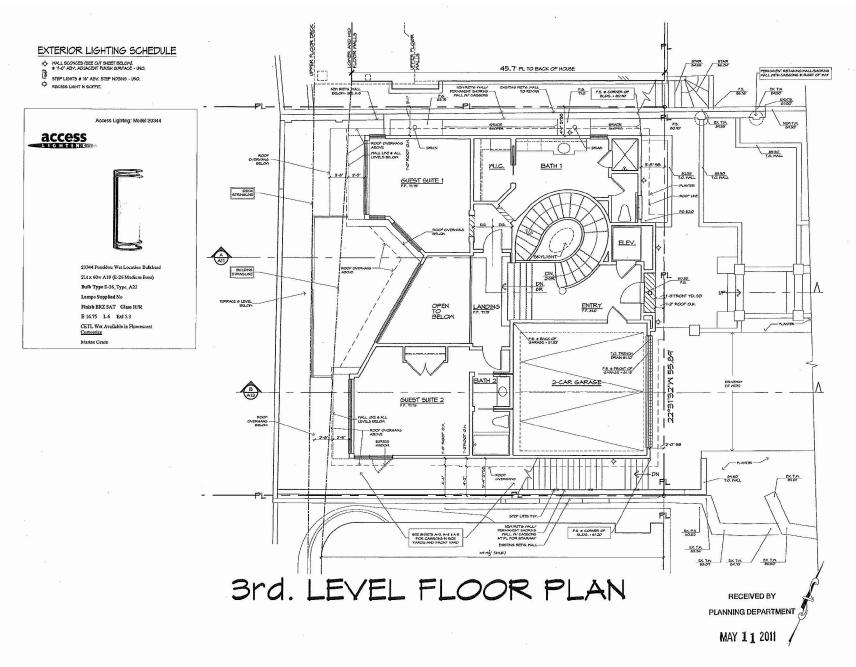
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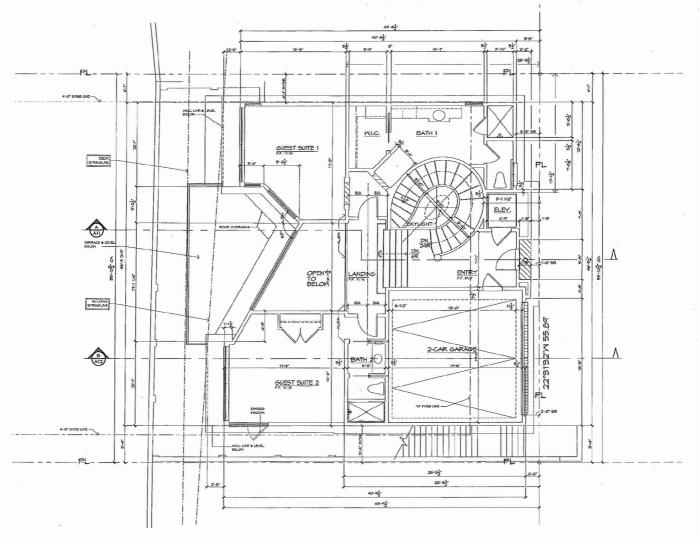
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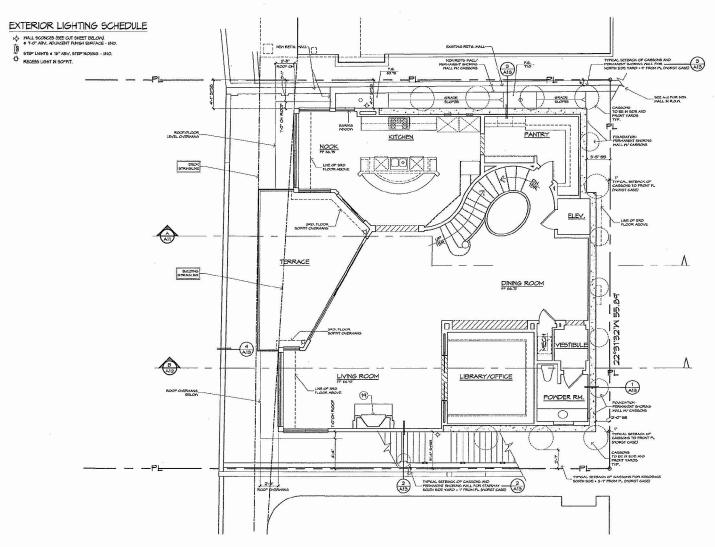
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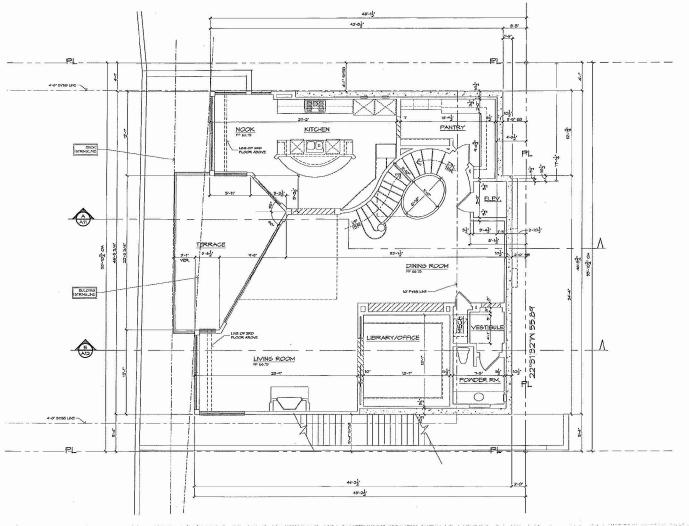
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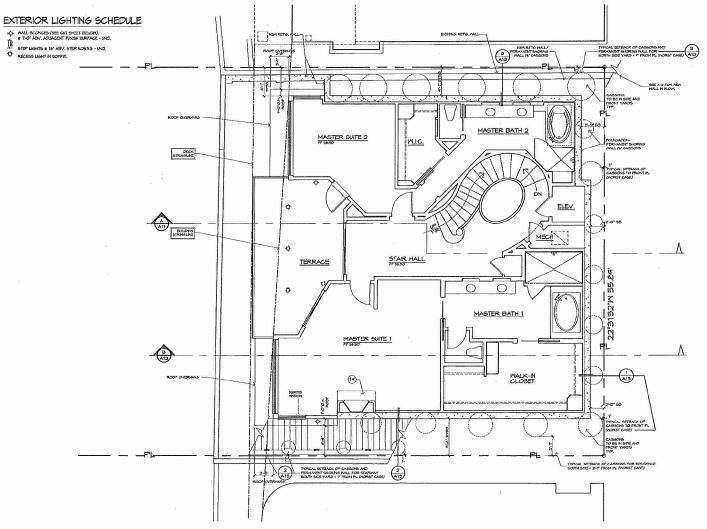
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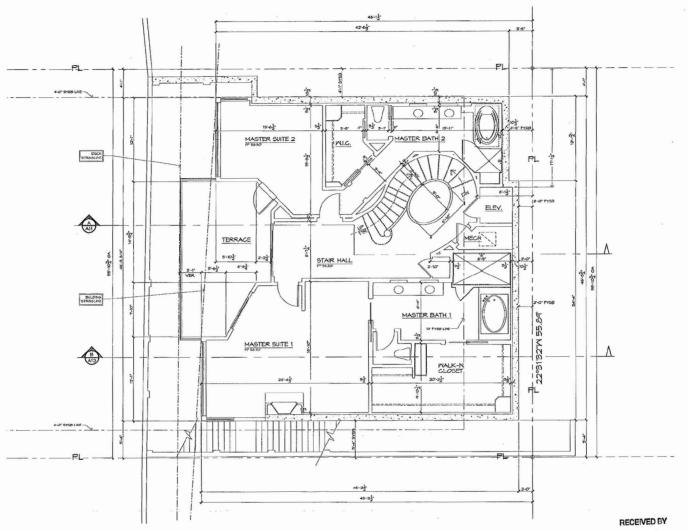
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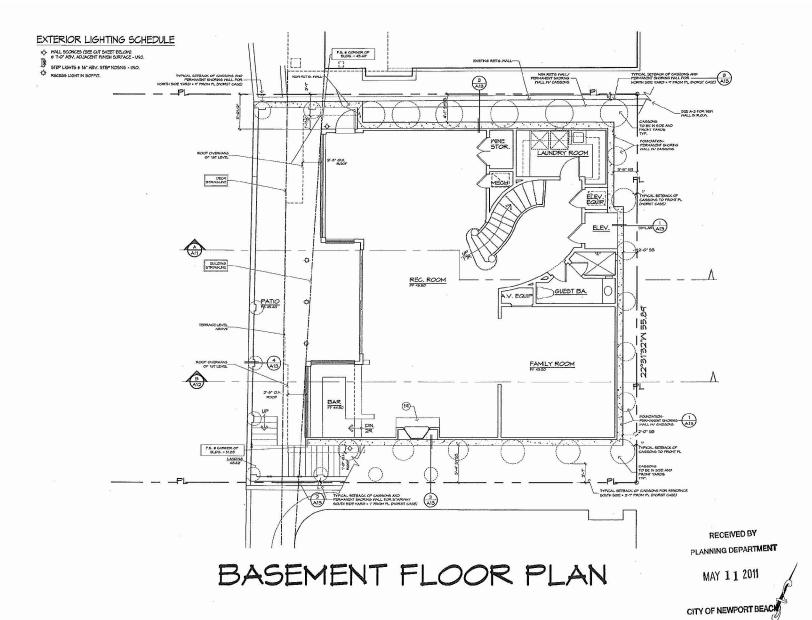
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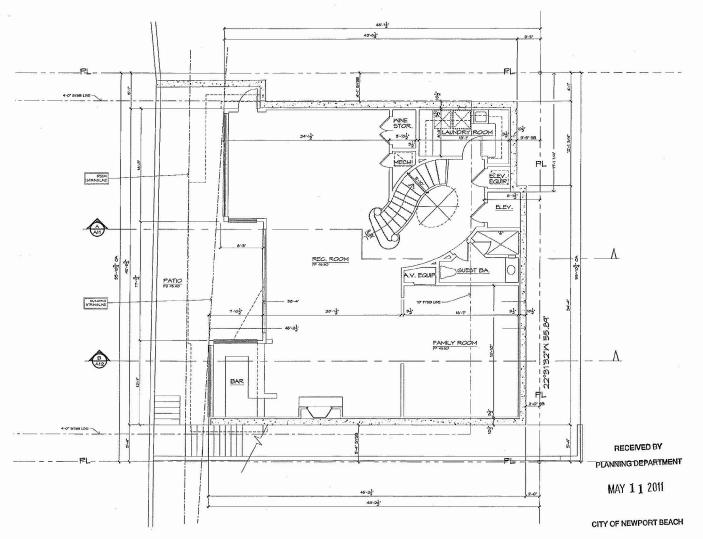


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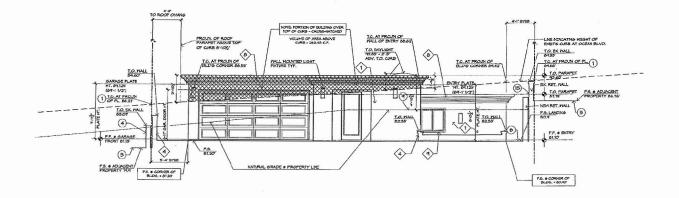
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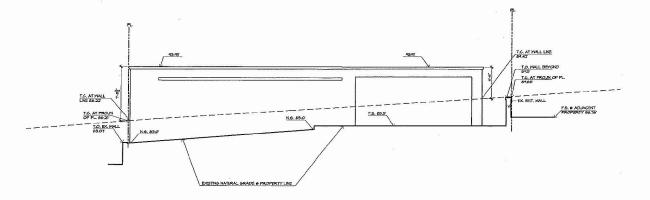
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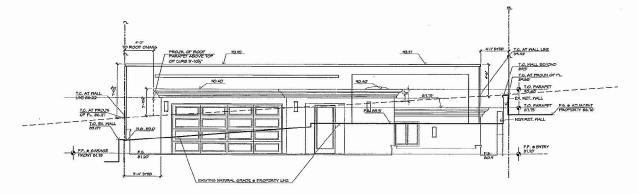
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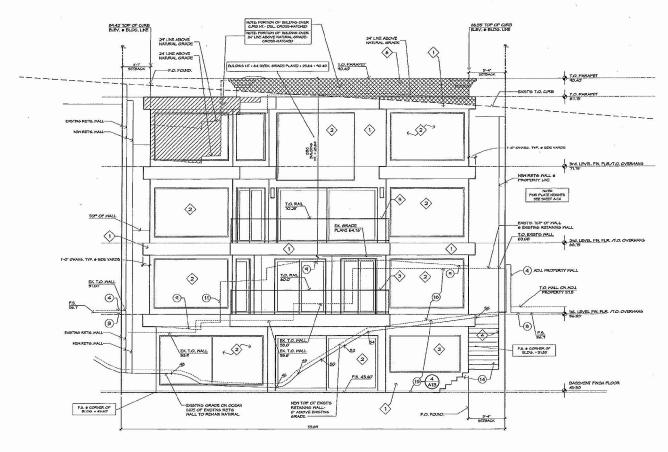


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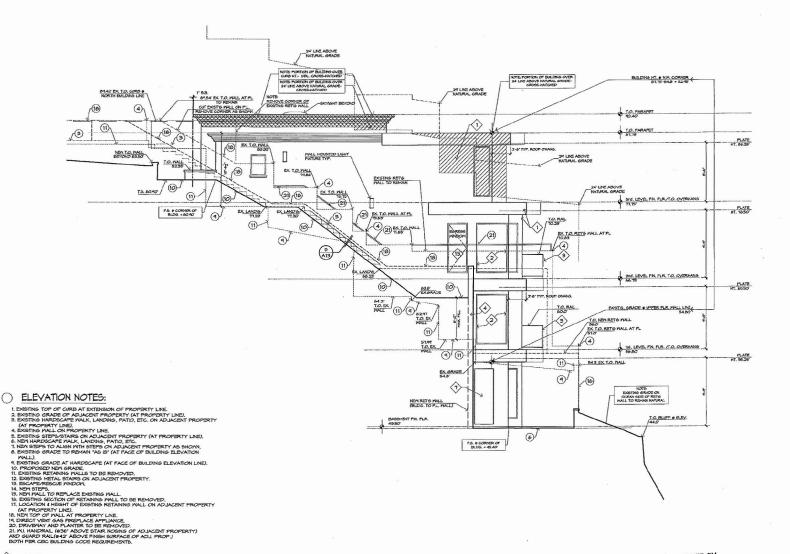


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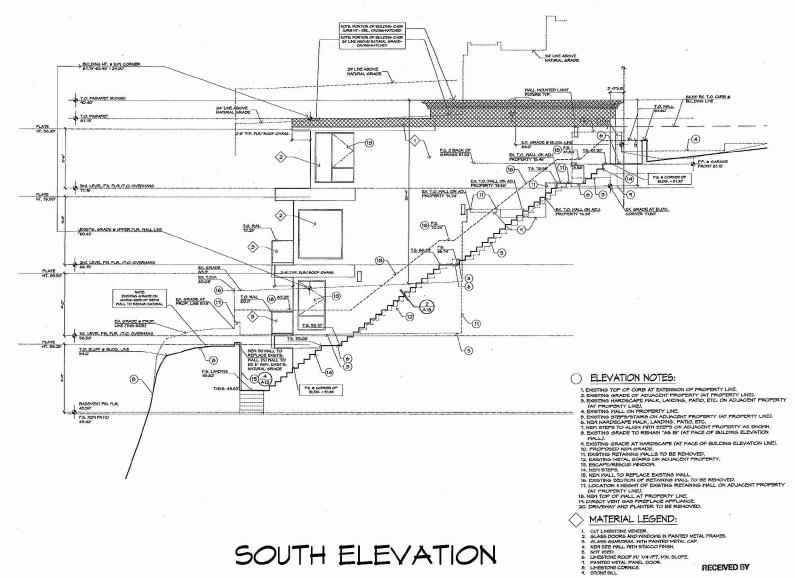


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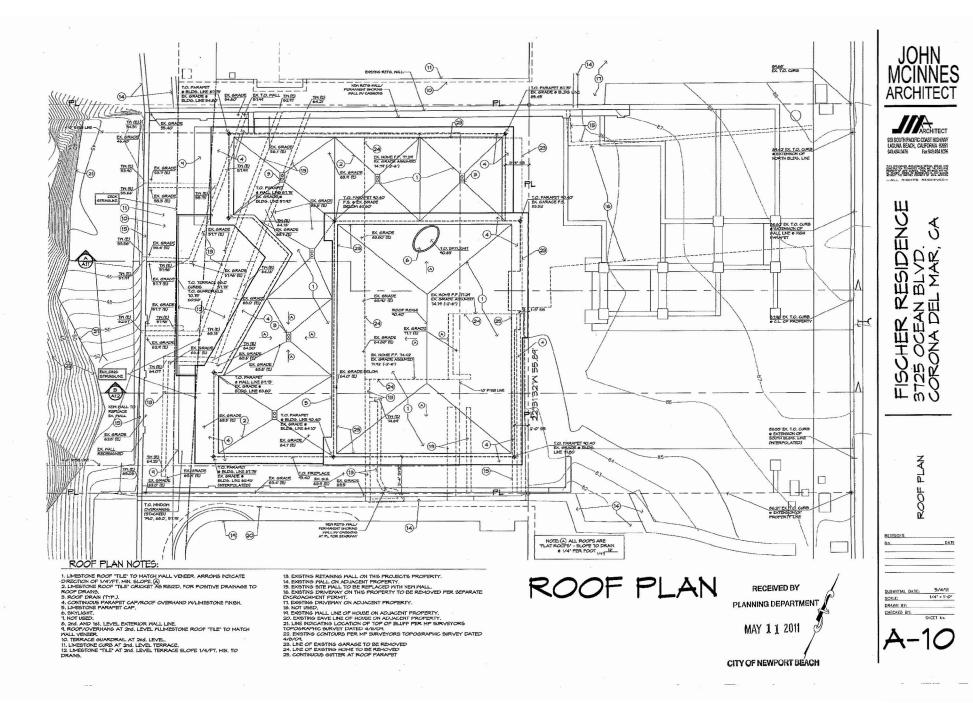
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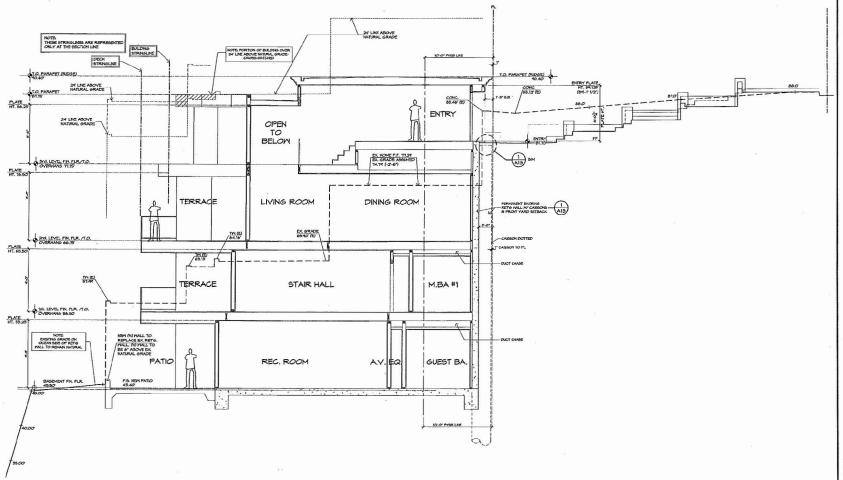
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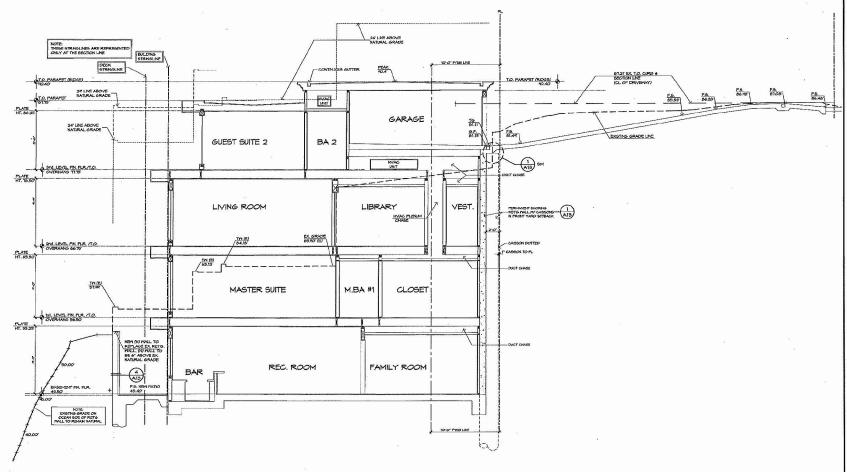
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SHEET No.



SECTION B

RECEIVED BY
PLANNING DEPARTMENT

MAY 1 1 2011

CITY OF NEWPORT BEACH

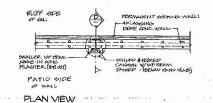
JOHN MCINNES ARCHITECT

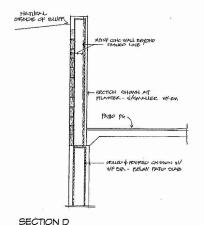


FISCHER RESIDENCE 8725 OCEAN BLVD. CORONA DEL MAR, CA

SECTION B

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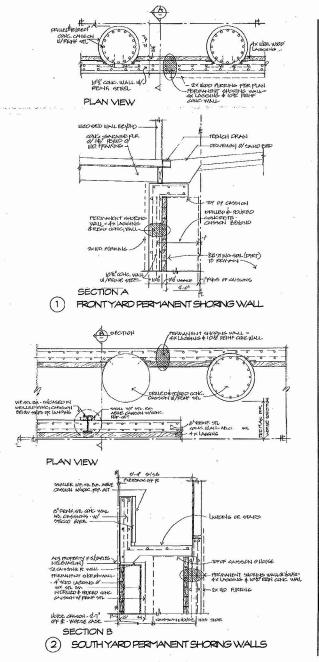
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3) NORTH YARD PERMANENT SHORING WALLS

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JOHN MCINNES ARCHITECT

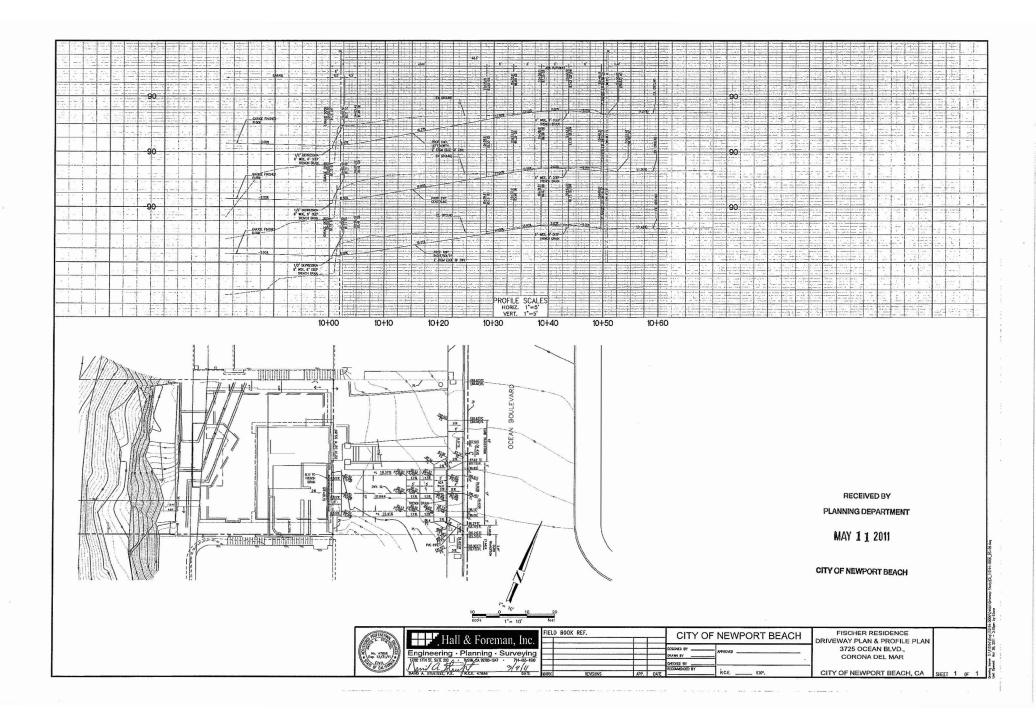


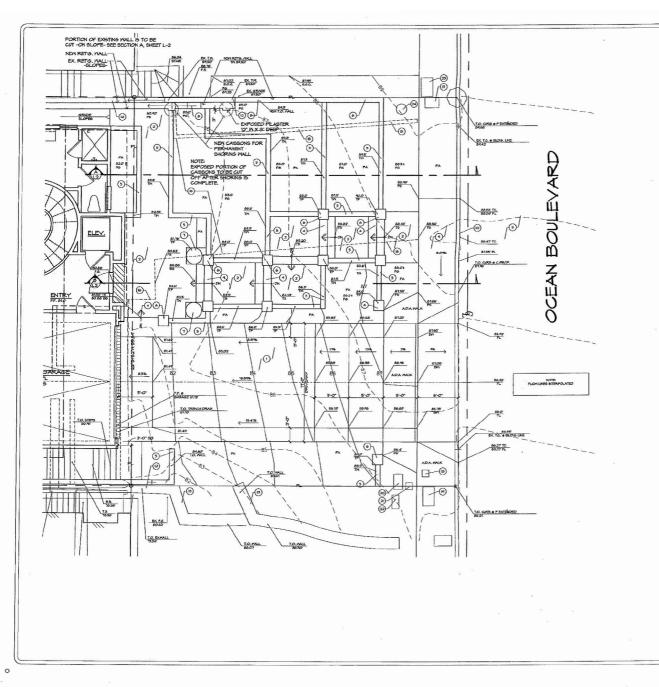
FISCHER RESIDENCE 3725 OCEAN BLYD. CORONA DEL MAR, CA

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CONSTRUCTION NOTES

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4546.35 S.F./ 21 S.F. 168,98 CU. FT. CUT

RECEIVED BY PLANNING DEPARTMENT

MAY 1 1 2011

CITY OF NEWPORT BEACH





Del Mar Yard Hardscape Corona Fischer Residence 3725 Ocean Blvd.,

Front dmm

SCALE 1/4"=1'-0"



SHEET NUMBER

L-1

